



National Press Photographers Association, Inc.

The Society of Visual Journalists

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**VIA FACSIMILE & EMAIL
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February 14, 2012

Commissioner Frederick H. Bealefeld III
Baltimore Police Department
242 W. 29th Street
Baltimore, MD 21211-2908

**RE: General Order J-16
Video Recording of Police Activity**

Dear Commissioner Bealefeld,

As general counsel for the National Press Photographers Association (NPPA) I have just been made aware of an incident that occurred on February 11, 2012 involving Baltimore Police officers who allegedly interfered with Scott Cover as he recorded the arrest of a young man on a Baltimore City street. As can be seen on the [recording of the incident](#), when one of the officers noticed Mr. Cover videotaping from across the street, she immediately approached him in an aggressive manner with handcuffs at the ready and ordered him to leave the area.

What is even more disturbing is that this incident took place less than 24 hours after your department released General Order J-16 (dated Nov. 8, 2011), ensuring “the protection and preservation of every person’s Constitutional rights.” That order, related to the “video recording of police activity,” also states “no member of the Baltimore Police Department may prevent or prohibit any person’s ability to observe, photograph, and/or make a video recording (with or without a simultaneous audio recording) of police activity that occurs in the public domain, so long as the person’s location, actions, and/or behavior do not create a legitimate, articulable threat to Officer safety, or an unlawful hindrance to successful resolution of the police activity.”

According to [press reports](#) Mr. Cover was told by officers that “he was loitering, and that he had to move along or risk arrest.” This action by your officers appears to be in direct contravention of both the letter and spirit of a policy that was just implemented in order to preempt a [lawsuit](#) against your department for flagrant violations of citizens’ constitutional rights to observe and record police activity in public. [Your own spokesman said](#), “The department waited until the process of informing and training officers was complete before releasing the November order,” but it seems that time may have been spent training officers how to circumvent the policy rather than follow it. Article 19 Section 25-2 of the Code of Public Laws of Baltimore City defines “loiter” as “to stand around or remain . . . at a public place or place open to the public and to engage in any conduct prohibited under this law.” Additionally, “It shall be unlawful for any person to loiter at a public place or place open to the public and to fail to obey the direction of a uniformed police officer . . . when not to obey such direction shall endanger the public peace” (emphasis added).

Aside from the fact that Mr. Cover was not endangering that peace by his self-evidently lawful actions, the code also provides a limitation on the “scope” of the police ordinance in §25-(c)(2) which states, “Nothing herein shall be construed to prohibit orderly picketing or other lawful assembly.” Accordingly, there is no more lawful assembly than the exercise of one’s First Amendment rights, which your seven (7) page Order was presumably implemented to protect.

That General Order “requiring” certain “action” during “routine encounters with the general public” states that “upon discovery that a bystander is observing, photographing, or video recording the conduct of police activity: DO NOT impede or prevent the bystander’s ability to continue doing so based solely on your discovery of his/her presence.” “BEFORE taking any police action which would stop a bystander from observing, photographing, or video recording the conduct of police activity, Officer(s) must have observed the bystander committing some act that falls within one of the six numbered conditions listed in . . . this Order . . .” (emphasis in the originals). And despite the fact that Mr. Cover did nothing more than record on a city street your supervisory officer orders him to move under threat of arrest.

As our organization, founded in 1946 with over 7,000 members, has pointed out to numerous groups and law enforcement agencies, photography by itself is not a suspicious activity. Contrary to the training that was ostensibly provided over the three (3) months since the Order was implemented, it appears that the message is not being received or followed. The continued actions by your officers to question, detain, interfere with and threaten to arrest someone engaged in a lawful activity under color of law is reprehensible. At best, behavior that chills free speech in contravention of your General Order violates department policy, at worst it is criminal.

While it may be understandable that your officers had a heightened sense of awareness during this incident, that is still no excuse for them to not recognize a citizen’s right to record a matter of public concern occurring in a public place. Law enforcement agencies are established to uphold and enforce existing laws not to use them as a pretext to punish someone exercising their free speech right to take photographs/videotape in public. This activity is protected by the First Amendment and may not be restricted by officers wishing to avoid the documentation of their actions. This is just the most recent incident in a rash of similar police abuses across the country.

NPPA stands ready to work with your department, the ACLU and the Court to assist in developing reasonable and workable policies and practices in order to avoid similar situations. In the meantime we would respectfully request that this incident be fully investigated and disciplinary action taken against the officers involved should that be indicated.

Thank you for your attention in this matter. I look forward to your response.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

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